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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,830	07/24/2003	Benjamin C. Rivera	DBH:0756.0814	3751
7590 06/15/2004			EXAMINER	
Donald B. Haslett Chernoff, Vilhauer, McClung & Stenzel, LLP 1600 ODS Tower 601 S.W. Second Avenue Portland, OR 97204-3157			THOMAS, DAVID B	
			ART UNIT	PAPER NUMBER
			3723	
DATE MAILED: 06/15/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/627,830	<b>Applicant(s)</b> RIVERA, BENJAMIN C.	
	<b>Examiner</b> David B. Thomas	<b>Art Unit</b> 3723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 July 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-55 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 30-33 is/are allowed.
- 6) ☒ Claim(s) 1,3-12,21,24,27-29 and 34-55 is/are rejected.
- 7) ☒ Claim(s) 2,13-20,22,23,25 and 26 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/24/03</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1, 3-12, 21, 24, and 27-29 are rejected under the judicially created doctrine of double patenting over claims 38-48, and 51-54 of U. S. Patent No. 6,622,327 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is anticipated by claims 38-48 and 51-54 and is covered by the patent since the patent and the application are claiming common subject matter.

3. Claims 34-55 are rejected under the judicially created doctrine of double patenting over claims 1-11, 16-18, 22-27, 29, and 33-35 of U. S. Patent No. 6,622,328 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is anticipated by claims 1-11, 16-18, 22-27, 29, and 33-35 and is covered by the patent since the patent and the application are claiming common subject matter.

***Allowable Subject Matter***

4. Claims 2, 13-20, 22, 23, 25, and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. Claims 30-33 are allowed.

6. The following is a statement of reasons for the indication of allowable subject matter: Regarding the subassembly of claim 30, the art of record considered as a whole, alone or in combination, neither anticipates nor renders obvious a fastener extending laterally from the first frame member at an end opposite the first end, and a tool bit attached by a pivot pin spaced apart from and located between the pivot axle and the fastener together in combination with the rest of the limitations in the independent claim. Regarding the folding multipurpose tool of claim 31, the art of record considered as a whole, alone or in combination, neither anticipates nor renders obvious a spring supporting member extending laterally from the first frame side member together in combination with the rest of the limitations in the independent claim.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David B. Thomas whose telephone number is (703) 308-4250. The examiner can normally be reached on 7-4<sup>1</sup> M-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David B Thomas can be reached on (703) 308-4250. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David B. Thomas  
Patent Examiner  
Art Unit 3723

dbt